



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

AUG 25 2006

REPLY TO THE ATTENTION OF:

AE-17J

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Ed L. Foster, Manufacturing Manager
CertainTeed Corporation
3303 East Fourth Street
Shakopee, MN 55379

Re: In the Matter of CertainTeed Corporation
CAA Docket No. **CAA-05-2006-0028**

Dear Mr. Foster:

I have enclosed a complaint filed against CertainTeed Corporation (CertainTeed), under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d). The complaint alleges violations of the Minnesota State Implementation Plan.

As provided in the complaint, if you would like to request a hearing, you must do so in your answer to the complaint. Please note that if you do not file an answer with the Regional Hearing Clerk within 30 days of your receipt of this complaint, a default order may be issued and the proposed civil penalty will become due 30 days later.

In addition, whether or not you request a hearing, you may request an informal settlement conference. If you wish to request a conference, or if you have any questions about this matter, please contact, Catherine Garypie, Associate Regional Counsel (C-14J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at (312) 886-5825.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Cheryl Newton".

Cheryl Newton, Acting Director
Air and Radiation Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:) Docket No. CAA-05-2006-0028
)
)
CertainTeed Corporation) Proceeding to Assess a Civil
Shakopee, Minnesota,) Penalty under Section 113(d)
) of the Clean Air Act,
Respondent.) 42 U.S.C. § 7413(d)
)
)

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Administrative Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. The Respondent is CertainTeed Corporation (CertainTeed), a corporation doing business in Minnesota.

Statutory and Regulatory Background

4. On May 24, 1995, U.S.EPA approved Chapters 7007 and 7011 as part of the federally enforceable SIP for Minnesota, with an effective date of July 24, 1995. 60 Fed. Reg. 27411. On May 18, 1999, U.S. EPA approved revisions to Chapters 7007 and 7011 as part of the federally enforceable SIP for Minnesota. 64 Fed. Reg. 26880. On February 24, 2005, U.S. EPA revised the format of 40 C.F.R. Part 52 for materials submitted by the State of Minnesota

that are incorporated by reference into its SIP (an administrative change affecting Chapters 7007 and 7011, among others). 70 Fed. Reg. 8930.

5. Minnesota Rule 7007.0150 Subpart 1 states that "No person may construct, modify, reconstruct, or operate an emission unit, emission facility, or stationary source except in compliance with an air emission permit from the [State] agency."

6. Minnesota Rule 7011.0070 Subpart 1 states "...the owner or operator of a stationary source must at all times attain at least the control efficiency listed in Table A for each piece of listed control equipment at the stationary source." Minnesota Rule 7011.0070 Table A includes a control efficiency of 99% for a fabric filter/total enclosure.

7. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for SIP violations that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19 (2004).

8. The Administrator may assess a penalty greater than \$220,000 or \$270,000 where the Administrator and the Attorney General of the United States jointly determine that a matter involving a larger penalty is appropriate for

an administrative penalty action. 42 U.S.C. § 7413(d)(1) and 40 C.F.R. Part 19 (2004).

9. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that this matter involving a penalty greater than \$220,000 or \$270,000, is appropriate for an administrative penalty action.

10. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

11. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

General Allegations

12. CertainTeed owns and operates a facility at 3303 East Fourth Street, Shakopee, Minnesota, which manufactures organic roofing materials, asphalt composition shingles, and dry felt products.

13. The CertainTeed Shakopee facility includes Line 1 and Line 3. Line 1 became operational in 1974. Line 3 became operational in September 2003.

14. Line 1 is a four wide roofing manufacturing machine that produces fiberglass based residential shingle products and organic based residential shingle products. As part of the coating section of the Line 1 process, filler is mixed with asphalt and applied to a dry felt or fiberglass mat. The Line 1 Filler Heater generates particulate matter (PM) emissions.

15. Line 3 is a residential shingle manufacturing machine that produces a laminated fiberglass shingle in three different weights. In the Surfacing Section of the Line 3 process, roofing granules and backsurfacer materials are applied to the top of a fiberglass sheet that has been through an asphalt coater. This process generates PM emissions.

16. Also at Line 3, when manufacturing layered asphalt roofing shingles, CertainTeed applies a very thin latex paint line to the surface of the shingle. This paint line is used as a nailing guide during installation of the shingle. The paint sits in a reservoir and a wheel passes through the reservoir and applies paint to the shingle as the shingle passes over the wheel. This is known as the Line 3 Nail Paint Guide Application. This process generates volatile organic compound (VOC) emissions.

17. Acting on a permit application dated April 11, 1996, Minnesota issued an initial Title V operating permit to the CertainTeed Shakopee facility on September 28, 2000. Acting on a permit modification application dated November 29, 2001, Minnesota issued a major amendment to that permit

on August 5, 2002, which included requirements for Line 3. Acting on a permit modification application dated July 30, 2003, Minnesota issued a second major amendment to that permit on February 3, 2004. Acting on a permit modification application dated August 19, 2005, Minnesota issued a third major amendment to that permit on January 26, 2006.

18. Emission units at CertainTeed's Shakopee, Minnesota facility are subject to the air emission permit regulations the Minnesota SIP at 7007.0150, subpart 1.

19. Emission units at CertainTeed's Shakopee, Minnesota facility are subject to the listed control equipment and control efficiencies regulations in the Minnesota SIP at 7011.0070.

20. On September 20, 2005, U.S. EPA issued a notice of violation to CertainTeed for violations of the Minnesota SIP regulation 7007.0150, Subpart 1 from January 2001 to January 2006.

21. On September 20, 2005, U.S. EPA issued a notice of violation to CertainTeed for violations of the Minnesota SIP regulation 7007.0500, Subpart 2.C.(4) from January 2001 to March 2005.

22. On September 20, 2005, U.S. EPA issued a notice of violation to CertainTeed for violations of the Minnesota SIP regulation 7011.0070 from September 2003 to August 2004.

23. On October 24, 2005, U.S. EPA and CertainTeed held a conference to discuss the September 20, 2005 notice of violation.

Count I

24. Complainant incorporates paragraphs 12 through 23 of this complaint, as if set forth in this paragraph.

25. Minn. Rule 7007.150, Subpart 1, states that no person may operate an emissions unit except in compliance with an air emission permit.

26. CertainTeed installed the Line 1 Filler Heater in 1974 as part of the initial construction and operation of the CertainTeed Shakopee plant.

27. CertainTeed did not have an air emission permit which allowed it to operate the Line 1 Filler Heater until January 26, 2006.

28. From 1974 to January 26, 2006, CertainTeed was violating the requirements of Minn. Rule 7007.150, Subpart 1.

Count II

29. Complainant incorporates paragraphs 12 through 23 of this Complaint, as if set forth in this paragraph.

30. Minn. Rule 7007.150, Subpart 1, no person may operate an emissions unit except in compliance with an air emission permit.

31. Minn. Rule 7011.0070 requires that certain listed control equipment attain at all times certain control efficiencies.

32. The Title V permit for the CertainTeed Shakopee facility states that the control equipment for the Line 3 Surfacing Section is a fabric filter, and that equipment

administrative penalty under Section 113(d). 42 U.S.C. § 7413(e).

42. Based upon an evaluation of the facts alleged in this complaint and the factors in Section 113(e) of the Act, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$272,140. Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991 ("penalty policy") and the September 21, 2004, EPA Memorandum entitled "Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule (Pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004)" ("September 2004 Skinner memorandum"). Enclosed with this complaint is a copy of the penalty policy and the September 2004 Skinner memorandum.

43. Complainant developed the proposed penalty based on the best information available to Complainant at this time.

44. Respondent does not have an ability to pay issue related to the proposed penalty.

45. Complainant may adjust the proposed penalty if the Respondent establishes defenses relevant to the penalty's appropriateness.

Rules Governing This Proceeding

46. *The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the*

Revocation/ Termination or Suspension of Permits (the Consolidated Rules) at 40 C.F.R. Part 22 (2004) govern this proceeding to assess a civil penalty. Enclosed with the complaint served on Respondent is a copy of the Consolidated Rules.

Filing and Service of Documents

47. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Boulevard, 13th floor
Chicago, Illinois 60604-3511

48. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Catherine Garypie, Associate Regional Counsel, to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Catherine Garypie at (312) 886-5825. Catherine Garypie's address is:

Catherine Garypie (C-14J)
Associate Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

Penalty Payment

49. Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or

cashier's check payable to "Treasurer, the United States of America", and by delivering the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to Catherine Garypie and to:

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

Opportunity to Request a Hearing

50. The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in its answer, as discussed in paragraphs 51 through 56 below.

Answer

51. Respondent must file a written answer to this complaint if Respondent contests any material fact of the complaint; contends that the proposed penalty is

inappropriate; or contends that it is entitled to judgment as a matter of law. To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified in paragraph 47, above, and must serve copies of the written answer on the other parties.

52. If Respondent chooses to file a written answer to the complaint, it must do so within 30 calendar days after receiving the complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

53. Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.

54. Respondent's failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation.

55. Respondent's answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
 - b. the facts that Respondent disputes;
 - c. the basis for opposing the proposed penalty;
- and

d. whether Respondent requests a hearing as discussed in paragraph 51 above.

56. If Respondent does not file a written answer within 30 calendar days after receiving this complaint the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

57. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Catherine Garypie at the address or phone number specified in paragraph 48, above.

58. Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. U.S. EPA encourages

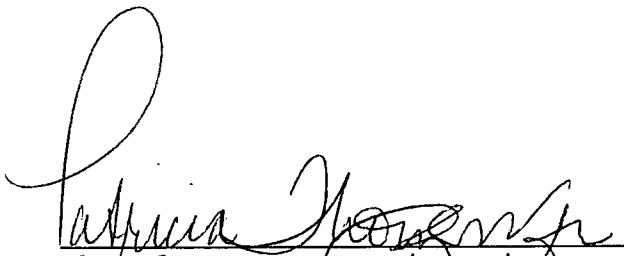
all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

59. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable federal, state, or local law.

AUG 25 2006

Date


Cheryl Newton, Acting Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511.


CAA-05-2006-0028

In the Matter of CertainTeed Corporation
Docket No. **CAA-05-2006-0028**

CERTIFICATE OF SERVICE

I, Loretta Shaffer, certify that I hand delivered the original and one copy of the Administrative Complaint, docket number **CAA-05-2006-0028** to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies of the Administrative Complaint, copies of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* at 40 C.F.R. Part 22, and copies of the penalty policy described in the Administrative Complaint by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

on the 29th day of August, 2006.


Loretta Shaffer
AECAS (MN/OH)

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